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VIRGINIA HOUSING COMMISSION

**SUMMARY**

# Virginia Housing Commission
# House Room C, General Assembly Building
# April 25, 2012
# 10:00 A.M.

Members present: Delegate Cosgrove, Senator Locke, Senator Watkins, Delegate Dance, Delegate Marshall (via telephone), Mark Flynn

Staff present: Elizabeth Palen, Beth Jamerson, and Laura Perillo

## I. Welcome and Call to Order

- **Delegate John Cosgrove**; C*hair*
  - o The meeting was called to order at 10:03 A.M.

## II. Multistate Mortgage Servicer Settlement

- **David B. Irvin**; *Senior Assistant Attorney General, Office of the Attorney General of Virginia*; provided the Commission with an overview of the National Mortgage Servicing Settlement ("the Settlement") with the five largest mortgage servicers in the United States: Bank of America, J.P. Morgan Chase, Wells Fargo, Citigroup, and Ally Financial (formerly, GMAC) (individually, "the Settling Servicer") (collectively, "the Settling Servicers").
  - o The Settling Servicers make up to 59% of the United States' market of residential mortgage servicing. The next nine servicers in the market make up only about nine percent of the total of market shares. The Settling Servicers own approximately 20% of the loans in the United States. The Settling Servicers, like all servicers, may or may not be the entity that made the mortgage loans in the first place. Rather, a servicer is the entity responsible for collecting the mortgage loan payment(s) and typically deal with foreclosures related to mortgage loans. Thus, the number of loans that the settling servicers own and service is a smaller subset of the total number of loans they deal with in general.
  - o The state's attorney generals from forty-nine states joined the Settlement. Oklahoma signed a similar settlement independently, which was announced the same day as the multi-state Settlement. Oklahoma filed

their consent judgment in Oklahoma state, where the multi-state Settlement was filed the following day.

- There are 43 state's banking commissioners involved in the Settlement, including commissioners of: the Virginia State Corporation Commission and the Bureau of Financial Institutes.
- There were also federal entities involved, including: the United States Department of Justice, the Federal Trade Commission, the Department of the Treasury, and the Department of Housing and Urban Development.
- The Settlement settles all administrative and civil claims (state and federal) regarding all residential loan servicing, foreclosure services, and loan origination. The Settlement does not settle any criminal, securitization, fair lending, mortgage discrimination, Mortgage Electronic Registry System ("MERS"), or settled claims. The Settlement also does not settle and third party claims--claims that an individual borrower may have against his mortgage lender and/or servicer.
- The Settlement provides $294.3 million in federal "menu" benefits to Virginians, though these are not hard dollar amounts. Rather, these are the amounts that the Settling Servicers are credited from taking various actions--sometimes ten cents to the dollar.
  - At least 60% of the benefits provided shall take the form of a first or second lien loan modification where a borrower is either already in default of in imminent risk of being in default. These loan modifications must include some form of principal reduction. A higher amount of credit is given for portfolio loans (loans that the specific Settling Servicer owns and sells).
  - The remaining money, around 40% of it, will provide these types of benefits to home owners that do not fit into the first category (those receiving at least 60% of the benefits).
    - These benefits include short sale, deed in lieu approvals from which the Settling Servicers will receive credit for taking various actions to increase the likelihood of short sales. This is particularly beneficial for homeowners with a first and second lien on their homes. This is because these homeowners are unable to complete a short sale of their home unless both the first and second lien holders agree. Through these services, second lien holders will be provided some compensation for allowing the short sale to occur which will have a market clearing effect.
    - These benefits include deficiency waivers. In Virginia, where a home is foreclosed on but the foreclosure does not provide the lender with the amount owed on the mortgage, the former homeowner is still responsible for this unpaid balance (the deficiency). Many lenders agree to waive the deficiency that is due on the loan on the first or second lien. These lenders within the Settling Servicers will get credit

towards the amount to which they committed. This allows Virginians in this situation to avoid large judgments against them.

        - These benefits include transitional funds, which will provide Virginians going through foreclosure with money to facilitate the transfer of the property back to the lender, and to help the resident to move out and find other housing. Lenders can receive credit on the amount due by making payments of over $15,000.
        - These benefits include anti-blight actions. Lenders can receive credit for demolishing blighted property, for helping to keep blighted properties off the market, for donating blighted properties, etc.
- The Settlement provides $31.3 million in hard dollar amounts to Virginian borrowers who have been foreclosed on between January of 2008 and December 31, 2011, whose mortgages have been serviced by the Settling Servicers, and who occupied the property on which the lender has foreclosed.
    - An estimated 15,000 Virginians will benefit from these funds if $2,000 provided to these homeowners.
    - The homeowner does not need to show legal wrongdoing in order to qualify for this payment, but will have to submit a claim for the payment alleging they are victims of servicing abuse (such as robo-signing, lost paperwork, or dual tracking).
    - Accepting the money does not affect the homeowner's ability to pursue any personal claims they may have with the Settling Servicers.
- The Settlement provides $84.3 million for interest savings over the life of loans for borrowers who refinance "underwater homes," homes for which the borrower owes more than the home's value.
- The Settlement provides Virginia's Office of the Attorney General with $66.5 million for the Attorney General's revolving fund. Any amount over $1.25 million that is unused by the end of the fiscal year (midnight on June 30, 2012) will revert to the general fund. The Settlement provides the State Corporation Commission and the Bureau of Financial Institutions with $1 million, which should be received soon.
    - The state can only designate 10% of the funds that they receive as a civil penalty. Aside from that, there are no limitations regarding how the state can use the money it receives.
    - The Settlement states that it is preferred that the state spends the funds on foreclosure prevention, counseling, consumer protection efforts geared towards prevention, prosecuting financial fraud, or compensating the state for the losses incurred from the unlawful conduct of the Settling Servicers.
    - The Attorney Generals of other states are distributing the Settlement funds to grants to nonprofits. Virginia's Attorney

General turned the funds over to the General Assembly to decide how to allocate the money.

- Within the Settlement, the Settling Servicers agreed to new, fairer "servicing standards" to promote transparency and timeliness. The Settling Servicers agree to promote short sales over foreclosures; and to provide more transparent fees, loan modification processes, and loan time-lines.
  - The Settling Servicers agree to provide homeowners with pre-foreclosure notices including the amount that is owed, the amount needed to reinstate, the terms of the loan, information on mitigation services, an explanation of the homeowner's right to request a copy of the endorsement notes with the name of the investor holding the loan, and an explanation of why the servicer has a right to foreclose.
  - The Settling Servicers agree to provide homeowners with a single point of contact with their company to prevent dual tracking of the foreclosure process.
  - The Settling Servicers agree to the development of loan portals that provide homeowners with a single resource for all of the documents and statuses related to their mortgage loan.
- The Settlement allows the Attorney General to bring criminal charges against the Settling Servicers who used robo-signing (automated signing by machinery in lieu of actual trustees) in violation of criminal laws.

## III. Current Housing Conditions in Virginia

- **Sonya Waddell**; *Associate Regional Economist, The Federal Reserve Bank of Richmond*, provided the Commission with an update on current housing conditions in Virginia, stating that in general, home sales are slow and house prices are stabilizing, but on a year-to-year basis prices for housing are still falling.
  - In the fourth quarter of 2011, the inventory of foreclosures in Virginia was 1.8%, translating to over 25,000 loans in foreclosure. In 2001-2003, the years of the highest inventory for foreclosures, there were 9,000 loans in foreclosure. However, things are getting better. In 2009, the highest inventory of foreclosures was over 30,000 loans in foreclosure.
  - Virginia is doing better than the rest of the country regarding foreclosures, as the inventory of foreclosures in the US was 4.4% for the fourth quarter of 2011. Virginia has the seventh lowest total inventory of foreclosures in the US. In Florida, the foreclosure inventory was as high as 14.3% which translates to over 450,000 loans in the foreclosure process. In Maryland, the foreclosure rate was as high as 4%. It is important to note that these numbers are related to how long loans stay in foreclosure, which is effected by whether the state processes foreclosures through statutes or through the courts. Virginia is a foreclosure by statute state and Florida is a judicial foreclosure state. Additionally Virginia has fewer homes entering foreclosure than many other states.

- Subprime loans make up about seven to eight percent of the mortgage inventory, but account for over a quarter of the foreclosure inventory of the state. Accordingly, subprime loans are still disproportionately represented in the foreclosure pool in Virginia-- although this is similar to the US as a whole.
- There are about 200,000 units in Virginia that are vacant, meaning; unrented, unoccupied, unsold, and generally unused. This number, however, does not include homes that are going through the short sale process.
- Existing home sales in Virginia have not returned to 2004-2005 sales levels. However, the Virginia Realtors Associations are optimistic about home sales-- as they have witnessed the home sales have returned to the levels of the 1990s (though it should be noted there are many more homes since then and more on the market).
- According to the Federal Housing Finance Agency, Virginia house prices increased 1.1% in the third quarter of 2011 and 0.7% in the fourth quarter of 2011. This is the first two quarter increase in house prices in Virginia since the first two quarters of 2007.
- According to CoreLogic's statistics, there was no change for house prices in February. According to CoreLogic estimates that 23% of original homeowners were faced with negative equity and that an additional 6% were facing year-negative equity (less than 5% equity for the house). This is in line with the national average for foreclosures.
- Virginia Beach, Richmond, and Norfolk are currently facing the most foreclosures in Virginia.
- According to a survey of 1,490 realtors (99% of them Virginia realtors), market conditions are getting better, with customer traffic up by more than 50%. Most customers, it was reported, are first time home buyers seeking mid-range and lower end homes. In contrast to the data explained above, 50% of the realtors stated that the inventories were low on homes. The realtors also stated that distressed homes are bringing down prices and borrowers are still having difficulties obtaining financing.
- According to a survey of 101 home builders (mostly from North Carolina), more than 50% of the home builders feel that the outlook for construction is better. However, the home builders agree with the realtors that the distressed home sales seem to be holding down prices and financing is still difficult to obtain for home sales.
    - **Delegate Cosgrove**, asked why only seven percent of the home builders responded to the survey. Ms. Waddell replied that she was not sure, but that she was disappointed with the response rate.
- The unemployment rate in Virginia is now down to 5.6% compared to the 8.2% for the United States as a whole. There was a slight payroll loss of 400 jobs in Virginia. There are still high unemployment rates in the southern most part and southwest Virginia.

## IV. Discussion of Work Group Topics for Study and Configurations

- **Delegate Cosgrove**,  stated that Delegate Dance will Chair the Neighborhood Transitions and Residential Workgroup. Housing and the Environment by Senator Watkins; Danny  Marshall will chair Affordable Housing, Mortgages and Real estate Law  and Delegate Cosgrove will chair the Common Interest Communities group.
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- Delegate Cosgrove stated that there is another single issue that is in need of review this year: (Senator Baker SB49, 2012) dealing with retirement communities' care, for which he will create  a special subgroup with the chair yet to be determined.

Senator Watkins asked in addition to the workgroups if the Commission would look at the issue of cash proffers and localities; more specifically if the localities are using the proffers or holding them and for what purpose are they being used.

**V. Public Comment**

- **Ralston Brook;** *resident of The Hermitage at Cedarfield, a Continuing Care Retirement Community* ("CCRC") *located in the West End of Richmond*, suggested the creation of a workgroup within the VHC to study CCRCs. Mr. Brook proposed that such a study should be broad in scope and focus on the need for more transparency in providing information regarding cost of care and other financial data to residents at CCRCs.
  - Mr. Brook explained that CCRCs provide a wide range of amenities and care for senior citizens, including: housing for independent senior citizens, assisted living services, and nursing services.
  - Mr. Brook stated that residents at Cedarfield pay entry and monthly fees to their governing body, Virginia United Methodist Homes ("VUMH"). Mr. Brook argued that VUHM had not furnished the "extensive financial data, including sufficient information to justify monthly increases" in accordance with their fiduciary duties. Mr. Brook stated that these duties are set out in Section 38.2-4910 of the Code of Virginia.
  - Mr. Brook stated that other residents of Cedarfield are also willing to assist the VHC in anyway possible to help ensure the governing bodies of CCRCs are acting in accordance with their duties.
- **Sandy Levin**; *President of the Virginia Association of Non-Profit Homes for the Aging, representing all the CCRCs in Virginia*; stated that VHC does not need to study CCRCs by way of a workgroup, because CCRCs are already overseen by the Bureau of Insurance and the State Corporation Commission, which oversees CCRCs financial information.
  - Ms. Levin stated that the CCRCs disclosure statement is provided each year, noting that for Cedarfield, the statement is made available for all residents to view in the community library. Ms. Levin also stated that the information discussed at monthly meetings between staff and residents is also fully disclosed.
- **George High**; *Vice President of Virginia Continuing Care Residence Association*; stated that the residents at CCRCs are not only concerned with the transparency of the financial information discussed by the governing body. Rather, the residents are seeking representation on these governing bodies, as many of the residents are

capable professionals who would like to understand how the governing bodies function.

## VI. Adjourn

- The meeting was adjourned at 11:23 A.M.